

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

JOHN PAUL THOMAS,

Plaintiff,

v.

No. CV 09-0718 RB/WDS

CORRECTIONAL OFFICER SALAZAR, ET AL.,

Defendants.


**ORDER**

This matter is before the Court on Plaintiff's petition for preliminary relief (Doc. 10) filed on August 21, 2009, in this civil rights action. Plaintiff, who is incarcerated in New Mexico after being transferred from California, initiated this action by filing a complaint seeking damages for alleged unconstitutional conditions of confinement. In his petition for preliminary relief he alleges that he "is scheduled to parole on September 12, 2009." He further alleges that New Mexico correctional officials have refused to cooperate in parole proceedings and have "stated that the Plaintiff will be incarcerated past his release date." For relief, the petition asks the Court to "issue an Order directing the New Mexico Corrections Department to release the Plaintiff on his scheduled release date of September 12, 2009."

The relief that Plaintiff seeks in his petition--ordering the New Mexico Corrections Department to release him--is not available in a civil rights action. "[A] habeas corpus proceeding is the proper mechanism for reviewing parole board actions if the remedy sought is release from confinement." *Schuemann v. Colorado State Bd. of Adult Parole*, 624 F.2d 172, 173 n.1 (10th Cir. 1980) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 490 (1973)); and see *Frey v. Adams County Court*

*Servs.*, 267 F. App'x 811, 813 (10th Cir. 2008) (“[S]uccess on this claim would result in a speedier release from custody, so the claim cannot be pursued under § 1983 but must be pursued as a habeas claim under § 2241.”). The Court will deny the petition without prejudice to Plaintiff’s right to pursue his claims in a proceeding under the habeas corpus statutes.

IT IS THEREFORE ORDERED that Plaintiff’s petition for preliminary relief (Doc. 10) filed on August 21, 2009, is DENIED without prejudice to his right to pursue claims in a proceeding under the habeas corpus statutes.

A handwritten signature in black ink, appearing to read "Robert J. Zach", is written above a horizontal line.

UNITED STATES DISTRICT JUDGE